

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.2865/1995  
(Smt. Bachu Vs. State & Ors.)

Date of order : 21.11.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Vijay Mehta, for the petitioner.  
Mr. S.N. Tiwari, Dy. Govt. Advocate.

By way of filing this writ petition, the petitioner has prayed for direction to the respondent-Municipal Corporation, Jodhpur to provide her appointment on the post of Sweeper on the regular pay scale from the date of giving first appointment to sweepers mentioned in Annexure-1. Further it is prayed that the respondents may be directed to pay wages, allowances and consequential benefits including seniority on the aforesaid date to the petitioner.

According to the facts of the case, the petitioner was appointed on the post of sweeper in the respondent-Corporation in the year 1985. However, her services were terminated in the year 1986. Thereafter again vide order dated 19.11.1989, the petitioner was appointed on the post of sweeper on daily wages along with 279 sweepers. The name of the petitioner appears at Sl. No.181 in the said order. The petitioner

immediately joined her services. Since then, she is continuously working with the Corporation and at the time of filing the present writ petition, she was posted at Air Force Circle vide order dated 8.12.1989.

As 300 posts of sweepers were sanctioned by the State Government as per the permission sought by the Corporation and in pursuance of that 215 sweepers amongst those who were appointed with the petitioner vide Annexure-1 dated 19.11.1989 on daily wages basis were appointed on regular basis in the pay scale prescribed for Class-IV employees. The petitioner repeatedly made requests to the respondent-Corporation to grant her the said pay scale and to give similar treatment with regard to appointment on the post of sweeper as her name is also appearing in Annexure-1 at Sl. No.181. However, relief sought for by the petitioner was not granted. Hence, this writ petition.

Learned counsel for the petitioner submitted that denial of appointment on the post of Sweeper by the respondent is in violation of the Article 14 of the Constitution of India because all other similarly situated persons who were appointed with the petitioner were granted benefit of appointment/regularization as per the sanction issued by the Government and they are getting salary in the regular pay-scale. In the aforesaid circumstances, as per the petitioner, her right of regularization is denied

without any reasons, therefore, she is entitled for the relief as prayed for by her in the writ petition.

In the reply filed by the respondents, a preliminary objection has been raised that there is alternative remedy available to the petitioner under the Rules to file revision for the relief sought for so also it is replied that the petitioner was drawing salary in the name of Bachu daughter of Sita Ram but the name of the petitioner appearing the order Annexure-1 at Sl. No.181 is Bachu daughter of Mangtu Ram. It is further contended by the respondents in their reply that the case of the petitioner was not considered due to non-availability of her service record. In reply to para No.7, it is specifically mentioned that "Para No.7 is not admitted in the manner alleged. The concerned committee had after a proper scrutiny of the whole case had ordered to regularize 208 employees out of the list of 215 and it did not prefer to issue orders for regularizing the services of the remaining 7 persons because of the reasons mentioned in the report of the committee itself. In that report with regard to Bachu/Sita Ram it had been observed as under :

“बाचु/सीताराम की मूल पत्रावली उपलब्ध नहीं होने एवं इनके द्वारा दस्तावेज प्रस्तुत नहीं करने पर नियमित नियुक्ति रोकी गयी ।”

According to the aforesaid reply, it is clear

that the respondents are accepting the appointment of the petitioner but due to non-availability of the service record her services were not regularized as per decision of the Committee.

In this case, it is admitted position that the petitioner was appointed as daily rate employee vide Annexure-1 and she was continuing on the date of filing the present writ petition. It is also admitted position of the case that the petitioner was not regularized along with similarly situated persons only on the ground that her record was not available with the Corporation at the time of consideration by the Committee for regularization of services. In my opinion, strange reply is given by the Municipal Corporation because they are not disputing Annexure-1 whereby petitioner was appointed. They are also not disputing that those persons who were appointed along with the petitioner were regularized. Likewise, they are not disputing that 300 vacancies were sanctioned by the Government but the reasons for denial of the regularization is on the ground that her record is not available. This reply cannot be accepted because it is evident from the record of the case that the petitioner was appointed in the year 1989 along with other persons and a corrigendum order was issued on 20.3.1991 whereby it was clarified that the name of petitioner mentioned at Sl. No.181 in the order dated 19.11.1989 as Smt. Bachu daughter of Mangtu Ram may be

read as Smt. Bachu/Sita Ram and she was continuing on the post on the date of consideration for regularization of services by the Committee but only due to lack on the part of the Office of the Municipal Corporation, the benefit of regularization to the petitioner has been denied. It is the duty of the employer to maintain the service record of the employees. It is not for the employee to maintain his/her service record.

In these circumstances, if appointment is not disputed then obviously the petitioner was entitled to be considered for regularization on the post of Class-IV employee as similarly situated persons were granted the said benefit of regularization.

In the result, the writ petition is allowed. The respondents are directed to regularize the services of the petitioner on the post of Sweeper with effect from the date when the services of other similarly situated persons, who were appointed along with petitioner vide order dated 19.11.1989, were regularized and grant her all consequential benefits within a period of three months from today.

(GOPAL KRISHAN VYAS), J.